

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOCKETED
MAY 27 1983

ATARI, INC.,
a Delaware corporation, and
MIDWAY MFG. CO.,
an Illinois corporation,
Plaintiffs,
vs.
NORTH AMERICAN PHILIPS
CONSUMER ELECTRONICS CORP.,
a Tennessee corporation, and
PARK TELEVISION d/b/a
PARK MAGNAVOX HOME ENTERTAINMENT
CENTER,
an Illinois partnership, and
ED AVERETT,
an individual,
Defendants.

Civil Action No. 81 C 6434

The Honorable

George N. Leighton

JURY DEMANDED

NOTICE TO TAKE DEPOSITION

TO: Daniel W. Vittum, Jr.
Robert G. Krupka
David E. Springer
Alexander F. MacKinnon

KIRKLAND & ELLIS
200 East Randolph Drive
Chicago, Illinois 60601

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Suite 1625
135 South LaSalle Street
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PLEASE TAKE NOTICE that commencing at 1:30 P.M. on July 25 and 10:00 A.M. on July 26, 1983, or on such other day or days as counsel may agree, at the offices of Pillsbury, Madison & Sutro, 101 Park Center Plaza, San Jose, California, defendants will take the deposition of Namco-America, Inc., 343 Gibraltar Drive, Sunnyvale, California, by such person or persons as Namco-America, Inc. shall designate to testify on its behalf. The deposition will be pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure and subpoena duces tecum. The schedule of matters on which examination is requested as set forth in the subpoena is attached hereto as Schedule 1 and the designation of materials to be produced as set forth in the subpoena is attached hereto as Schedule 2. Only document production will occur on July 25; testimony will commence on July 26.

The deposition will proceed before a Notary Public or other officer authorized to administer oaths and will continue from day to day or by adjournment until complete. You are invited to attend and cross-examine.



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Attorneys for Defendants

OF COUNSEL:

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SCHEDULE 1

"PAC-MAN Project" as used hereinafter means all activities including but not limited to research and development, market analysis, market research, marketing, planning, manufacturing, distributing, advertising, publicity for, naming, licensing, negotiating for licenses, negotiating for acquisition of rights, acquiring rights, and asserting and enforcing any rights which relate in any way to the PAC-MAN video game or the video games known as BABY PAC-MAN, MS. PAC-MAN, PAC-MAN PLUS, PROFESSOR PAC MAN, and SUPER PAC-MAN, or any copyright, trademark, or other rights in those video games.

1. All activities of Namco-America, Inc. concerning the PAC-MAN Project with Midway Mfg. Co. or representatives thereof, including, but not limited to:

(a) The negotiations leading to, the circumstances surrounding, the intent of the parties to, the execution of, and the terms of the following agreements:

(i) The "Preliminary Agreement" between Namco Limited and Midway Mfg. Co. dated August 16, 1980 relating to the coin-operated video game called "Pac-Man" (Puckman);

(ii) The "Assignment of Copyrights" by Namco Limited to Midway Mfg. Co. dated October 10, 1982 and relating to the coin-operated amusement game known as "Pac-Man" or "Puckman";

- (iii) The letter from Midway Mfg. Co. to Namco, Limited dated October 11, 1980 and relating to the "Assignment of Copyrights" for PAC-MAN;
- (iv) The "License Agreement" between Namco Limited, Namco America, Inc., and Midway Mfg. Co. entered into November 4, 1980 and relating to a game called "Pac-Man" or "Puckman";
- (v) The "Addendum to Agreement" between Namco Limited, Namco America, Inc. and Midway Mfg. Co. effective April 27, 1981 and relating to the agreement of paragraph 1(iv) above;
- (vi) The "Second Addendum to Agreement" between Namco Limited, Namco America, Inc. and Midway Mfg. Co. effective July 24, 1981 and relating to the agreement of paragraph 1(iv) above;
- (vii) The "Third Addendum to Agreement" between Namco Limited, Namco America, Inc. and Midway Mfg. Co. effective November 9, 1981 and relating to the agreement of paragraph 1(iv) above;
- (viii) The letter of confirmation from Midway Mfg. Co. to Namco America, Inc. dated November 23, 1981 and relating to license fees for games that use the Pac-Man name and characters;
- (ix) The "Addendum to Agreement" between Namco Limited, Namco-America, Inc. and Bally Midway Mfg. Co. effective August 1, 1982 and relating to the agreement of paragraph 1(iv) above.

(b) The cancellation of the "Assignment of Copyrights" referred to in paragraph 1(a)(ii) above.

(c) Any other agreements or understandings, whether written or oral, expressed or implied to which either Midway Mfg. Co., Namco Limited, or Namco-America, Inc. is a party and relate to any copyright or trademark right in the PAC-MAN video game.

2. All activities of Namco-America, Inc. concerning the PAC-MAN Project with Atari, Inc. or representatives thereof, including, but not limited to:

(a) The negotiations leading to, the circumstances surrounding, the intent of the parties to, the execution of, and the terms of the following agreements:

(i) The "License Agreement" between Namco-America, Inc. and Atari, Inc. and entered into April 27, 1981 relating to that certain video game called "PAC-MAN";

(ii) The exclusive license between Namco-America, Inc. and Atari, Inc. under certain copyrights and trademarks including the United States copyright claimed under Certificate of Registration Number PA83-768 and dated April 27, 1981;

(iii) The "License Agreement" between Namco-America, Inc. and Atari, Inc. and entered into December 9, 1981 relating to that certain video game called "PAC-MAN";

(iv) The "License Agreement" between Namco Ltd., Namco-America Inc., and Atari, Inc. made May 28, 1982 and relating to that certain video game called "PAC-MAN";

(v) Any agreements, assignments, licenses, or other conveyance of rights, whether written or oral, expressed or implied, by which Namco-America, Inc. received any rights in the properties purportedly licensed to Atari, Inc. in the agreements referred to in paragraph 2(i)-2(iv) above;

(vi) Any other agreements or understandings, whether written or oral, expressed or implied, to which either Atari, Inc., Namco, Limited, or Namco-America, Inc. is a party and relates to any copyright or trademark right in the PAC-MAN video game.

3. All activities of Namco-America, Inc. concerning the PAC-MAN Project with Namco Limited of Japan.

4. All activities of Namco-America, Inc. concerning the PAC-MAN Project with Tomy Corporation of Carson, California and/or Tomy Kogyo, Inc. of Japan including, but not limited to:

(a) Any investigation into or evaluation of any copyright, trademark, or other property rights of Tomy Corporation or Tomy Kogyo, Inc. bearing on any copyright or trademark right in the PAC-MAN video game.

(b) Any investigation into or evaluation of any copyright, trademark, or other property right of Tomy Corporation or Tomy Kogyo, Inc. in the two clam shell, Mr. Mouth, PAC-MAN or PUCK MAN design.

(c) Any investigation into or evaluation of the creation, design, manufacture, or sale by Tomy Corporation or Tomy

Kogyo, Inc. of any game, bank, or other device including the two clam shell, Mr. Mouth, Pac-Man, or Puckman design or sold under the name Mr. Mouth, Pac-Man or Puckman.

5. All activities of Namco-America, Inc. concerning the PAC-MAN Project and relating to licensing, negotiating for licenses, assigning, negotiating for assignments, acquiring rights, or negotiating for the acquisition of rights in the PAC-MAN, MS. PAC-MAN, BABY PAC-MAN, PAC-MAN PLUS, PROFESSOR PAC MAN, and SUPER PAC-MAN games including, but not limited to, any copyright, trademark, or other rights in those video games.

6. The creation, origination, authorship, and/or design of the PAC-MAN Project including, but not limited to, the creation, origination, authorship and/or design of (a) the audiovisual work included in the PAC-MAN game and the characters contained therein; and (b) the program included in the PAC-MAN game.

7. The activities and facts referred to in the affidavit executed by Hideyuki Nakajima on June 25, 1982 in the action between Atari Incorporated and Atari International (U.K.) Inc., plaintiffs, and Philips Electronic and Associated Industries Limited and N.V. Philips' Gloeilampenfabrieken, defendants, Action 1982 A No. 1897 in the High Court of Justice, Chancery Division, Group B.

8. The relationship between Namco-America, Inc. and Namco, Limited.

9. Matters within the personal knowledge of the deponent.

SCHEDULE 2

All documents and things within the possession, custody, or control of Namco-America, Inc., its officers, employees, representatives, and attorneys as follows:

1. All documents and things which constitute, memorialize, record, reference, or relate to any of the activities of paragraphs 1-7 of Schedule 1.
2. The source code and object code for the PAC-MAN video game.
3. The Temporary Specification for the PAC-MAN video game and any English translation thereof.
4. The Final Specification for the PAC-MAN video game and any English translation thereof.
5. The documents and things identified on the List of Documents Served by Plaintiffs on 25 April 1983 in the action between Atari Incorporated, Atari International (U.K.) Inc., Namco, Limited, and Namco-America, Inc., plaintiffs, and Philips Electronic and Associated Industries Limited, defendant, Action 1982 A No. 1897 in the High Court of Justice, Chancery Division, Group B.

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing NOTICE TO TAKE DEPOSITION was served upon the attorneys for each of the plaintiffs by delivering copies to them at the following addresses:

Daniel W. Vittum, Jr.
Robert G. Krupka
David E. Springer
Alexander F. MacKinnon

KIRKLAND & ELLIS
200 East Randolph Drive
Chicago, Illinois 60601

and

Eric C. Cohen
A. Sidney Katz
Donald L. Welsh

WELSH & KATZ
Suite 1625
135 South LaSalle Street
Chicago, Illinois 60603

all this 24th day of May, 1983.

A handwritten signature in cursive script, likely of the deponent, is written over a horizontal line.